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No. 97-841

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ROY C. CHEATAM, and 72 other class members for themselves and the class of more than 800 federal law enforcement officers,

Petitioners,

v.

H.E. MONROE, JR., as Commissioner of the Alabama Department of Revenue; DOUG NELSON, individually and as President of the Alabama State Police Association; and STEVE WOLFE, individually and as President of the Alabama State Trooper Association, Inc.,

Respondents.

On Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama

BRIEF IN OPPOSITION OF RESPONDENTS ALABAMA STATE POLICE ASSOCIATION AND ALABAMA STATE TROOPERS ASSOCIATION

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QUESTION PRESENTED FOR REVIEW

Whether the State of Alabama may grant an exemption from state income tax for a per diem expense allowance provided to its law enforcement officers that is reasonably related to expenses likely to be incurred due to the nature of their employment, if the State also grants an exemption for per diem expense allowances received by federal law enforcement officers. *Ragsdale v. Dept. of Revenue*, 895 P.2d 1348 (Or. 1995), *cert. denied*, 116 S.Ct. 569 (1995); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989); *Sheehy v. Public Employees Retirement Div.*, 864 P.2d 762 (Mont. 1993); *Filios v. Commissioner of Revenue*, 615 N.E.2d 933 (Mass. 1993), *cert. denied*, 511 U.S. 1030 (1994).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iv
ADDITIONAL STATUTORY PROVISION INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	4
ARGUMENT	5
I. THE TAXATION OF THE FEDERAL INCOME BY THE STATE OF ALABAMA DOES NOT VIOLATE THE LIMITED CONSENT TO STATE TAXATION OF FEDERAL INCOME UNDER THE PUBLIC SALARY TAX ACT	5
II. COURTS HAVE NOT EXTENDED THE INTERGOVERNMENTAL IMMUNITY DOCTRINE TO INVALIDATE TAX SCHEMES THAT HAVE AN ADVERSE IMPACT OR NO IMPACT ON FEDERAL EMPLOYEES SIMPLY BECAUSE OF DIFFERENCES IN STRUCTURE AND AMOUNT OF THEIR PAY OR EXPENSE REIMBURSEMENT	10
CONCLUSION	16

TABLE OF AUTHORITIES

CASES: Page

Barker v. Kansas, 503 U.S. 594 (1992) 11
Davis v. Michigan Dept. of Treasury, 489 U.S. 803 (1989) 5, 6, 11, 13, 14, 15
Deputy Sheriffs' Assoc'n v. Tuscaloosa County Comm'n, 610 So.2d 1159 (Ala. 1992) 2
Ex Parte Holladay, 466 So.2d 956 (Ala. 1985) 2
Filios v. Commissioner of Revenue, 615 N.E.2d 933 (Mass. 1993), *cert. denied*, 511 U.S. 1030, 114 S.Ct. 1538, 128 L.Ed.2d 191 (1994) 13
McGuire Oil Co. v. Mapco, Inc., 612 So.2d 417 (Ala. 1992) 2
Phillips Chemical Co. v. Dumas Indep. School Dist., 361 U.S. 376 (1960) 4
Ragsdale v. Dept. of Revenue, 895 P.2d 1348 (Or. 1995), *cert. denied*, —— U.S. ——, 116 S.Ct. 569, 133 L.Ed.2d 493 (1995) 13, 14
Sheehy v. Public Employees Retirement Div., 864 P.2d 762 (Mont. 1993) 12, 13
Sizemore v. Rinehart, 611 So.2d 1064 (Ala. Civ. 1992), *writ of cert. quashed*, 611 So.2d 1069 (Ala. 1993) 11
Tuscaloosa County Comm'n v. Deputy Sheriff's Assoc'n of Tuscaloosa County, 632 So.2d 442 (Ala. 1993) 2

OTHER AUTHORITIES:

Statutes

ALA. CODE OF 1975
§ 36-21-2 2
§ 36-21-2(b) 2
1973 Ala. Acts 763 2
1977 Ala. Acts 1438 ..... 1, 2
1984 Ala. Acts 679 3
1985 Ala. Acts 1254 3
1986 Ala. Acts 799 3
1987 Ala. Acts 508 3
1994 Ala. Acts 1102 3
1997 Ala. Acts 1491 3
Public Salary Tax Act of 1939
4 U.S.C. § 111 ..... 4, 5, 6, 11, 12, 13

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BRIEF IN OPPOSITION OF RESPONDENTS ALABAMA STATE POLICE ASSOCIATION AND ALABAMA STATE TROOPERS ASSOCIATION

ADDITIONAL STATUTORY PROVISION INVOLVED

The following statutory provision is involved in this case and is intended to supplement the Constitutional and Statutory Provisions cited by the Petitioners. The following provision is reprinted in its entirety in the Appendix at page 1a.

1977 Ala. Acts, 1438.

STATEMENT OF THE CASE

The State of Alabama has provided pursuant to ALA. CODE § 36-21-2 (1975), that certain law enforcement officers of the State of Alabama should receive a sum certain allowance each day (i.e., per diem) while in service to the State in order to pay for various work related expenses which would otherwise be absorbed by the law enforcement officers. This "subsistence allowance," adopted in 1973, is excluded from state taxation by ALA. CODE § 36-21-2(b) (1975). This section provides: "The subsistence allowance shall not be subject to any income or other taxes levied by the State of Alabama or the federal government." See Petition A-15a. In 1977, the Alabama Legislature by joint resolution stated: "[I]t was and is the intent of the Legislature of the Sovereign State of Alabama that the subsistence allowance provided by Act No. 763, H 286, 1973 Regular Session (Acts of Alabama 1973, p. 1145), as amended, was to be solely a subsistence expense allowance for the purpose of providing meals while said officers are on duty and is not considered as compensation under the laws of this state." See Response to Petition A-1a (emphasis added).[1] Recognizing the nature of this subsistence allowance, the Alabama Supreme Court has correctly referred to this payment as a "per diem stipend," *Tuscaloosa County Comm'n. v. Deputy Sheriffs' Assoc'n of Tuscaloosa County*, 632 So.2d 442, 444 (Ala. 1993), and a "per diem expenses allotment." *Deputy Sheriffs' Assoc'n. v. Tuscaloosa County Comm'n.*, 610 So.2d 1159, 1160 (Ala. 1992). This language provides additional confirmation of the intent of the Legislature regarding the nature of the per diem subsistence allowance.

Since its original enactment in 1973, the statute has been amended numerous times and for various reasons.

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[1] When a court is called upon to interpret a statute, it is the court's duty to ascertain and implement the legislative intent expressed within the statute. *Ex Parte Holladay*, 466 So.2d 956 (Ala. 1985); *McGuire Oil Co. v. Mapco, Inc.*, 612 So.2d 417 (Ala. 1992).

When the statute was amended in 1984, the Legislature increased the subsistence allowance paid to the specifically enumerated state law enforcement agencies from $5.00 per day to $8.00 per day. See Petition A-20a. Over the next few years, this statute was amended to provide funds for additional state law enforcement agencies. See Petition A-22a through A27a. The Legislature again amended this section in 1994, "to provide further for the subsistence allowance . . . to include on a graduated basis officers with the Department of Corrections." See Petition A-28a. And finally, the Legislature recently amended the language of this statute raising the $8.00 per diem allowance to $12.00 per day. See Petition A-30a.[2] The language used by the Legislature is consistent with the notion that any and all subsequent amendments to this statute did not change the fundamental nature of the payments as a per diem subsistence allowance.

Furthermore, it is not disputed that federal law enforcement officers also receive flat per diem monetary allowances to roughly cover their undocumented business related travel expenses upon which they are not taxed. The federal and state per diem travel expense allowances vary in value and amount, with the federal per diem allowance often being in excess of the state allowance amount. However, the federal law enforcement personnel do not receive any form of daily subsistence allowance that is comparable to the state officers' allowance.

The Petitioners objected to the state of Alabama's tax scheme as discriminatory and filed suit. However, the trial court recognized the fact that there are substantive differences between the per diem subsistence allowance received by the state law enforcement officers and the regular pay received by the federal Petitioners. "In both *Davis* and *Sizemore* the only difference in the retirees was the source of their retirement income. Those who received

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[2] This was the first increase in the per diem allowance since 1984.

retirement income from the States received some exemptions while those who received the same type of income from the federal government did not. However, the Court is of the opinion that the situation here is not analogous to *Davis* or *Sizemore*." See Petition A-8a. The trial court concluded, "Alabama is not giving differential tax treatment based on the *source* of income." See Petition A-9a. (emphasis in original.) Upon this ruling, the Petitioners appealed.

The Alabama Court of Civil Appeals stated that the "dispositive issue is whether the tax scheme at issue violates the doctrine of intergovernmental tax immunity and 4 U.S.C.A., § 111." See Petition A-2a. The appellate court again rightly concluded that *Davis* was not analogous to the present case and once more stated, "Alabama is not giving differential tax treatment based on the 'source' of the income. It is simply not giving a tax credit to law enforcement officers for pay not received." See Petition A-3a. In so holding, the courts noted that Alabama has never taxed the per diem allowances of federal law enforcement officers, despite the fact that such per diem allowance, like the state per diem subsistence allowance, is not tied in many instances to actual expenses. Thus, the courts concluded that state taxation of the federal income is not violative of the *Public Salary Act of 1939* or the constitutional doctrine of intergovernmental immunity.

REASONS FOR DENYING THE PETITION

This Court should deny the Petition for Writ of Certiorari because the decision of the Alabama courts, uphold the validity of the statute in question:

(a) Is in accord with 4 U.S.C. § 111 and the principle of intergovernmental tax immunity.

(b) Is in harmony with the decisions previously rendered by this Court in *Phillips Chemical Co. v. Dumas Indep. School Dist.*, 361 U.S. 376

(1960) and *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989), since Alabama does not discriminate against employees of the federal government by treating them differently from the State's own employees for tax purposes.

In *Davis*, this Court ruled that a Michigan statute that taxed federal retirement benefits but excluded state retirement benefits from taxation was discriminatory and consequently violated 4 U.S.C. § 111; *Davis* 489 U.S. 803. However, in *Davis*, it was "undisputed that Michigan's tax system discriminate[d] in favor of retired state employees and against retired federal employees." *Davis* at 814. In *Davis*, the State of Michigan sought only to justify its discrimination by providing this Court with a "rational reason" for such discrimination. *Id.* at 816. In this matter, unlike *Davis*, there is no discrimination, and what remains undisputed is the simple fact that the federal plaintiffs, like their state counterparts, do not pay any state income tax on flat-rate per diem expense allowances.

Alabama's tax laws apply equally to everyone, regardless of the "source" of the income. The fact that the federal government has failed to grant its law enforcement officers a small daily subsistence per diem allowance equal to that of the State does not render unconstitutional the State exemption. And since both the trial and appellate courts' reasoning was sound and in keeping with the established principle of intergovernmental tax immunity and the Act, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. THE TAXATION OF THE FEDERAL INCOME BY THE STATE OF ALABAMA DOES NOT VIOLATE THE LIMITED CONSENT TO STATE TAXATION OF FEDERAL INCOME UNDER THE PUBLIC SALARY TAX ACT.

The *Public Salary Tax Act of 1939* provides that the "United States consents to the taxation of pay or com-

pensation . . . if the taxation does not discriminate . . . because of the source of the pay or compensation." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809; 4 U.S.C. § 111. The tax laws of Alabama fully comply with all applicable federal law and this Court's holding in *Davis*.

The Petitioners assert that Alabama's state income tax scheme, which taxes the income of federal law enforcement officers, violates the constitutional doctrine of Intergovernmental Immunity and the limited consent to state taxation of federal source income granted by Congress in the *Public Salary Tax Act of 1939*, 4 U.S.C. § 111 (hereinafter referred to as the "Act"), since state law provides an exemption from state taxation for certain per diem subsistence expense payments to state law enforcement officers. However, the Act specifically allows state taxation of federal income as long as such taxation "*does not discriminate . . . because of the source of the pay or compensation.*" The Petitioners claim that this language requires a portion of their regular pay (i.e., salary) to be exempt from taxation.

The Petitioners have attempted to demonstrate, pursuant to *Davis*, that there is no substantive difference between the per diem subsistence expense allowance received by state law enforcement officers and the regular pay otherwise received by the federal law enforcement officers. Notwithstanding Petitioners' assertions, the Alabama courts have examined the evidence and logically concluded that substantial differences existed. "In this case, it is undisputed that federal law enforcement officers do not receive a comparable daily subsistence allowance from the federal government. It is also undisputed that the regular merit system salary of the state law enforcement officers is taxed the same as the regular pay of federal law enforcement officers." See Petition A-9a. The trial court also noted that only specific state law enforcement officers receive this pay. See Petition A-9a. "Neither state employees in general nor law enforcement officers in general receive

the allowance. . . ." See Petition A-9a. In other words, only the state law enforcement officers enumerated in the statute receive this allowance, and then only to the extent so provided.

Furthermore, the per diem subsistence allowance is reasonably related to expenses likely to be incurred by such state law enforcement officers due to the nature of their employment. And since the tax treatment is based on the *nature,* not the *source* of the payment, the taxation of the Petitioners' income does not violate the doctrine of intergovernmental immunity or the federal and state statutes cited by the Petitioners. Moreover, federal law enforcement officers are likewise not required to pay state income tax on any identified subsistence allowance or other flat rate expense reimbursement.

A review of the testimony of Doug Nelson, the Alabama State Police Association President, reflects that the per diem subsistence allowance was properly characterized by the legislature as a "*subsistence allowance*" and "*subsistence expense allowance*" and, in this sense, is no different from other flat per diem reimbursements received by state and federal workers which are not subject to state taxation.[3] Court Record 429-30. The intent of the stipend was to reimburse state enforcement officers for certain unique out-of-pocket costs that they are expected to absorb, which can include meals, uniform maintenance and dry cleaning, practice ammunition, etc. Court Record 429. In fact, some state law enforcement officers, such as state troopers, are continually on the road and are typically unable to return home for meals, even in those instances where they do not otherwise qualify for the state travel allowance generally available to all employees.

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[3] Indeed, one logical extension of the Petitioners' argument would be to make all other flat per diem allowances, both state and federal, subject to state income taxation.

The only Plaintiff to provide testimony in this proceeding, Mr. Gary Wright of the U.S. Customs Service, conceded that as a federal worker he also receives flat monetary allowances for certain business related expenses. As shown in his testimony, the federal law enforcement officers, regardless of whether the officers actually incurred any expense, receive these amounts. If the federal officers spend less on meals and incidentals than the flat per diem reimbursement, they realize a gain. *Under such circumstances, it is uncontroverted that Mr. Wright and the other class members do not pay state income tax on such flat "subsistence allowance," nor is there any effort underway to tax such amounts.* This demonstrates that the state does not discriminate in the taxation of amounts received by federal law enforcement officers which are intended to roughly cover undocumented business related expenses.

The Petitioners contend that the state law enforcement subsistence allowance is not comparable to the federal per diem reimbursement since it is received for every day the state officers are engaged in their law enforcement duties, regardless of whether the officer actually travels away from his or her base or receives other state reimbursement for travel expenses. It is also true that some law enforcement officers hold administrative duties and thus may not incur some of the costs identified by the Respondents, such as uniform cleaning, receive the allowance. While the Respondents agree that some state law enforcement officers may not incur, on any particular day, $12.00 in business related expenses for which they are not otherwise reimbursed, others may incur more. This fact is also true of federal officers who receive per diems. *In fact, the same problem exists to varying degrees in regard to all flat rate per diem reimbursement schemes.* While the state and federal per diem allowances vary both in amount and availability, the Respondents are aware of no authority for the proposition that allowances received by state and federal workers must be identical in all respects in order

for the state to grant a tax exemption for such allowances. In fact, *the Petitioners have cited no case or statute for the proposition that there must be no differences between federal and state per diem expense programs.* A contrary ruling would place in jeopardy the state tax exemption for all per diem reimbursements, both state and federal. The expense allowance is a reasonable approximation of certain unique, out-of-pocket expenses that can be expected to be incurred by state law enforcement officers and, therefore, is distinguishable from the salaries of federal law enforcement agencies.

At both the trial and appellate levels, the Petitioners offered a comparison of a federal law enforcement officer's state income tax return with a hypothetical return showing the tax savings if $12.00 (at that time $8.00) of the federal employee's income was excluded from taxation. The Petitioners concluded that the source of the pay is the only basis for the divergent tax treatments. This, however, is simply not so. *What was missing from the federal law enforcement officer's tax return was any reference to flat per diem allowances received by the federal employee.* Such per diem amounts were not included in the state tax return as taxable income and were not otherwise reported to or taxed by the State. It remains undisputed that the State of Alabama currently treats all per diem allowances the same, regardless of the source, regardless of the amount, and regardless of whether they are offset dollar for dollar by actual expenses.

The Petitioners also make much of the fact that the state per diem subsistence expense allowance is reported to the federal government as income.[4] It is true that the

[4] When making this argument, the Petitioners also alleged, without any substantiation, that the State employees take a deduction from thier state income taxes for the expenses intended to be covered by the per diem allowance. There remains nothing in the record or stipulated fact to support this base assertion. Moreover, if any Respondent has improperly taken a deduction for otherwise

IRS currently treats the subsistence allowance as ordinary income, subject to an offsetting deduction in those cases where a state officer documents an offsetting business related expense recognized under the federal tax code. The Respondents disagree with the manner in which the subsistence allowance is reported to the IRS and, to the Respondent's knowledge, this treatment has not yet withstood the test of a court challenge. Moreover, as is reflected in the affidavits and attached exhibits of Respondent Doug Nelson and those filed by the Alabama State Troopers Association, it is undisputed that state law enforcement officers regularly incur job related expenses for which they are not otherwise reimbursed. The IRS could determine tomorrow that all state per diem reimbursements should be taxable for federal tax purposes, except to the extent that an actual expense is documented. This would not mean, however, that the state discriminates in the manner in which it treats federal and state reimbursement. The IRS' treatment of the subsistence expense allowance is not dispositive of whether such payments are reasonably related to regular expenses incurred by state law enforcement officers and are thus distinguishable from the regular pay of the Petitioners for purposes of the Act.

II. COURTS HAVE NOT EXTENDED THE INTERGOVERNMENTAL IMMUNITY DOCTRINE TO INVALIDATE TAX SCHEMES THAT HAVE AN ADVERSE IMPACT OR NO IMPACT ON FEDERAL EMPLOYEES SIMPLY BECAUSE OF DIFFERENCES IN STRUCTURE AND AMOUNT OF THEIR PAY OR EXPENSE REIMBURSEMENT.

The Petitioners rely upon several cases that stand for the general proposition that it is impermissible for a state to treat employees of the federal government differently than it treats its own employees for taxation purposes. As

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reimbursed expenses, the Commissioner of Revenue could easily remedy this fact through the normal audit process.

is shown below, most of the cases cited by the Petitioners follow a common theme and are not applicable to the facts before this Court.

In *Barker v. Kansas,* the State of Kansas taxed the retirement benefits of retired United States military personnel but did not tax benefits of retired state and local government employees. *Barker,* 503 U.S. 594 (1992). Once again, a state had changed its tax laws so that one tax law applied to state employees while a different tax law applied to federal employees. In *Barker,* this Court held that under these facts, there were no significant differences between the two classes that justified the different tax treatment by the State of Kansas. *Id.* at 600. In a 1992 case, the fact situation presented to the Alabama Courts was similar, if not identical, to the fact situations in *Barker* and *Davis. See, Sizemore v. Rinehart,* 611 So.2d 1064 (Ala. Civ. App. 1992), *writ of cert. quashed,* 611 So.2d 1069 (Ala. 1993). Based upon this Court's holding in *Davis,* the Alabama Courts held that the state taxation scheme violated 4 U.S.C. § 111 and the doctrine of intergovernmental tax immunity.

Both *Sizemore* and *Barker* were grounded in the U.S. Supreme Court decision of *Davis v. Michigan Dept. of Treasury,* 489 U.S. 803 (1989), which invalidated a Michigan tax scheme that exempted retirement income received from the State of Michigan from state taxation, while taxing retirement income received from the federal government. In *Davis,* like the other similar cases previously mentioned, the states had two different sets of rules for tax purposes for identically characterized income: one set of rules applied to federal personnel while the other set applied to state personnel. *Davis,* at 803. The case before this Court is unlike *Davis* in that there has been and remains only one set of rules that applies to all personnel, both state and federal. The rule that applies to all parties is this: *All per diem and flat rate reimbursements are not taxable income under state law, regulation and practice regardless of the source of that income.*

It is important to note that federal per diem allowances have different internal rules for qualification and availability than do state allowances. Federal and state per diem expense allowances vary in value and amount, with the federal per diem allowance often being in excess of the state allowance amount. Inevitably, different per diem allowance schemes will produce different tax consequences. The fact that the two systems have different internal rules and reimbursement rates does not necessarily operate to make the state law for per diem expense allowances discriminatory, just as it does not make the federal regulations for per diem allowances discriminatory.

In *Sheehy v. Pub. Employees Retirement Div.*, the Supreme Court of Montana was called upon to decide whether a state tax statute that phased out a $3,600 tax exemption beginning at $30,000 was constitutional. *Sheehy*, 864 P.2d 762 (Mont. 1993). The Plaintiffs, federal retirees, sought to have the statute declared unconstitutional under 4 U.S.C. § 111 as a discriminatory tax law against federal personnel based on the source of their income. *Sheehy*, 864 P.2d at 767. The Plaintiffs argued that since federal pensions were larger than that of their state counterparts, the resulting inequity amounted to discrimination based on the source of that income. *Id.* The court stated that "the controlling federal statute *does not prohibit all differences* in state taxation of state and federal pensions. Rather, it precludes taxation which discriminates against federal retirees because of the source of the pension." *Id.* (emphasis added). The differences between the amounts of the federal and state pensions when the tax law of Montana was applied resulted in different results: The federal retirees tax exemption was phased out while the state retirees exemption remained intact. In holding that Montana's tax law did not discriminate against federal retirees, the Montana Supreme Court stated that the "phase-out exemption is neutral on its face; it applies to all taxpayers equally." *Id.*

The Petitioners now reason that because Alabama law enforcement officers receive a *different* per diem expense allowance, that Alabama is discriminating against federal law enforcement officers. In fact, this Court has stated that states may impose a tax scheme with a divergent impact resulting from a difference in the amount of benefits received. *Davis* at 817; *Sheehy*, at 767. Just because there are differences does not mean there is discrimination. As long as the laws are applied equally to all classes, discrimination does not exist.

In a 1993 case, a class of military retirees brought an action under 4 U.S.C. § 111 seeking a decrease in their state income tax paid on military pensions. *See, Filios v. Commissioner of Revenue*, 615 N.E.2d 933 (Mass. 1993), *cert. denied*, 511 U.S. 1030, 114 S.Ct. 1538, 128 L.Ed.2d 191 (1994). The State of Massachusetts provided a state income tax exemption for contributory retirement systems. *Id.* at 934. The federal retirees did not qualify for this exemption since their retirement system was classified as non-contributory. *Id.* The State retirement system was exempt even though 90% of the state employees' retirement benefits were funded by the state government and thus were not contributory. Nevertheless, the fact that 10% of the state retirement fund was contributory was held to be a sufficient substantial difference accounting for the differential tax treatment. *Id.* at 935. And on this basis, the court ruled that the evidence "[did] not support a claim that the Commonwealth is taxing Federal retirees in a discriminatory manner." *Id.* at 936. The differences in this matter are even more compelling than those in *Filios*. Furthermore, all persons present before this Court are taxed in the same manner. Therefore, there is no discrimination against the Petitioners.

In 1991, Oregon repealed the tax exemption granted to state retirees in response to *Davis* since no similar tax exemption was granted to federal retirees. *See Ragsdale v. Dept. of Revenue*, 895 P.2d 1348, 1350 (Or. 1995), *cert. denied*, 116 S.Ct. 569, (1995). Subsequently, the

Oregon Legislature increased retirement benefits to some state retirees, but "did not extend any reciprocal benefits to federal retirees taxed under Oregon Law . . . ." *Ragsdale*, 895 P.2d at 1351. Ensuing this legislative modification, a federal retiree brought suit for a refund of state taxes paid and claimed that Oregon impermissibly discriminated against federal retirees since Oregon did not extend similar retirement benefits to retired employees of the federal government. *Id.*

The Oregon Supreme Court noted that there was no *per se* discrimination in the tax code of Oregon and that both the federal and state retirement benefits were taxed similarly. *Id.* at 1352. The court then cited with approval the order entered by the Oregon Tax Court:

> "What the state does with regard to compensation of its employees, current or retired, is simply irrelevant to an inquiry as to the tax treatment of state and federal pensions. In essence, [taxpayer] argues that the state cannot change the compensation of its employees without forfeiting the right to tax federal pension income. This is the very type of interference that the doctrine of intergovernmental tax immunity was intended to prevent. *Davis* did not mandate that state and federal retirees must receive equal pension benefits. Rather, *Davis* requires that both classes must be treated equally by the state's income tax laws."

Id. at 1351-52. Stated another way, "[i]ntergovernmental tax immunity does not require that the state treat state and federal employees the same way, it requires only that the state system of taxation be equal." *Id.* at 1353. In reviewing the U.S. Supreme Court's decision in *Davis*, the Oregon Supreme Court stated that the controlling law says that "a state may not discriminate *in taxation* between state and federal retirees, based on the source of the benefits." *Id.* at 1353, (emphasis in original). The court also stated that nothing within the controlling legislation dictated that states must give consideration to the level of

compensation that they pay to their retirees in comparison to the level of compensation paid by the federal government to its retirees. *Id.* at 1354. The court concluded that "[f]ederal employees lose the right to complain about inequality in the state tax system when the system treats them equally. Oregon does that now." *Id.* at 1357.

In the case before this Court, the Petitioners are seeking an extension of a non-tax benefit simply because Alabama has given a per diem expense allowance to its law enforcement personnel. Alabama's tax law is not discriminatory: that is to say, the Petitioners agree that the State of Alabama taxes per diem subsistence allowances in the exact same manner for both federal and state law enforcement personnel. What the state does with regard to its employees is a question for the legislature as long as the State does not discriminate against federal employees *in taxation*. If one accepts Petitioners' argument, the logical extension is that a state could not change any compensation or expense reimbursement plan designed for its employees without affecting the taxation scheme of federal employees and, conseqeuntly, all employees, both federal and state. The *Davis* holding did not mandate that federal and state employees and/or retirees receive the same benefits or compensation. *Davis* only requires similar classes to be treated equally by the States' income taxation laws. Alabama does that now.

CONCLUSION

The conclusio[illegible]ons reached by the Alabama trial and appellate courts a[illegible]re correct and based soundly upon established law. The[illegible] per diem subsistence expense allowance received by stat[illegible]te law enforcement officers is distinguishable from the r[illegible]egular pay of the Petitioners, and for this reason the state[illegible] tax exemption is not violative of federal or state law. T[illegible]he U.S. Constitution and federal law do not prohibit th[illegible]e practice of Alabama to exempt all per diem allowance[illegible]s just because the federal government has chosen not to r[illegible]match the State's subsistence allowance to its law enforcen[illegible]ment officers. The expense allowance allocated by the Al[illegible]abama Legislature is not discriminatory as it is reasonably[illegible] related to reimbursing law enforcement officers for expe[illegible]nses likely to be incurred during the course of performance of their daily duties.

For these re[illegible]asons, this Court should deny the Petition for Writ of Cert[illegible]iorari.

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